IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9085 OF 2004

Elder Pharmaceuticals Ltd. ...Petitioner

Versus

Rakesh Varshenya & Anr ...Respondents

.....

Mr. J.P. Cama with Sanjay Dhulapkar counsel for Petitioner

Mr. C.U. Singh, counsel for Respondent.

.....

CORAM: B. H. MARLAPALLE, J.

DATED: 1ST FEBRUARY, 2005

P.C.:-

1. Heard Mr. Cama, the learned senior counsel with Mr. Dhulapkar for the petitioner company and Mr. C.U. Singh, the learned counsel for the Respondent No.1. Respondent No.2 be deleted forthwith.

2. The respondent employee is working as a Sales Officer with Headquarter at Agra and under the Delhi Regional Office. He came to be transferred by an order dated 26.2.2004 from Agra to Delhi. It appears that on receipt of the said order, he submitted a representation to the Managing Director on 11.3.2004 and is nothing further was heard on the said representation, he approached the Industrial Court at

Mumbai in Complaint (ULP) No. 268 of 2004 and challenged the order of transfer as amounting to an act of Unfair Labour Practice. In the said complaint an application for interim relief under Section 30(2) of the MRTU and PULP Act, 1971 was also filed. The Management opposed the complaint filed under Item 3, 5, 9 and 10 of Schedule IV of the Act as well as the application for interim relief. However, by the impugned order dated 3.7.2004 the learned Member of the Industrial Court was pleased to allow the application at Exh.U-2 partly and the transfer order dated 26.2.2004 came to be stayed till the representation dated 11.3.2004 was decided by the petitioner company.

3. It appears that the representation has been subsequently decided by communication dated 20.9.2004. In the meanwhile, on 16.8.2004 the employee i.e. the complainant has been issued a charge sheet, he filed another application for interim relief on or about 30.8.2004 before the Industrial Court and the same was disposed of on 30.9.2004 on the basis of the pursis filed by the employer. It was stated by the employer that the representation would be reconsidered and when it was finally rejected on 20.9.2004 the employee has filed a third application for interim relief on 4.10.2004 before the Industrial Court and the same is pending.

In these circumstances, the impugned order in this petition has in fact ceased to operate and, therefore, the challenge to the said order need not be gone into at this stage.

4. However, Mr. Cama, the learned senior counsel referred to some of the findings recorded by the Industrial Court in the said interlocutory order and more particularly the finding on the issue of the territorial jurisdiction of the Industrial Court to entertain the complaint filed by the said employee. It is evident that the findings of the Industrial Court on the same issue are prima facie and more particularly because the representation dated 11.3.2004 or 16.3.2004 as the case may be was addressed to the Managing Director based at Mumbai and he was required to decide the said representation. It is clear from the reasoning set out by the Industrial Court that the finding regarding the territorial jurisdiction was mainly on the background that the representations were pending with the Managing Director at Mumbai. There is no doubt that the Industrial Court will have to decide the said issue of jurisdiction afresh after the representations have been decided by the company and by taking into considerations the law laid down in the case of **M/s. Patel Roadways Ltd. Vs. Prasad Trading Co. reported in AIR 1992 SC 1514** and in the

case of **New Moga Transport Company Vs. United India Insurance Co. Ltd. and others reported in AIR 2004 SC 2154** alongwith the other related issues on the basis of the decisions that may be cited by the respective parties in addition. However, for deciding the application for interim relief filed by the complainant afresh the issue of jurisdiction will have to be decided first while deciding the pending application on merits.

5. Mr. Singh, the learned counsel for the respondent employee submitted that his salary has not been released. This is an issue which the employer will look into and take appropriate steps keeping in mind that the representation has been decided finally on 20.9.2004 and thus, the salary at least upto September,2004 shall have to be released forthwith. For the salary for the remaining period, the employee is not estopped from seeking appropriate remedy if so advised.